

C. DONALD ADAMS
DOROTHY M. ADAMS

IBLA 83-333

Decided March 28, 1983

Appeal from decision of California State Office, Bureau of Land Management, rejecting noncompetitive geothermal resources lease application. CA 13281.

Affirmed.

1. Geothermal Leases: Applications: Generally -- Geothermal Leases: Discretion to Lease -- Geothermal Leases: Lands Subject to

Where lands in issue formerly were included in a now terminated geothermal resources lease, and no listing of units for re-leasing had been made as of the time appellant filed a noncompetitive geothermal resources lease application, BLM properly rejected the application in accordance with 43 CFR 3210.1

APPEARANCES: C. Donald Adams, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

C. Donald Adams and Dorothy M. Adams appeal the California State Office, Bureau of Land Management (BLM), decision of December 20, 1982, which rejected their application for a geothermal resources lease CA 13281, because the land had previously been included in geothermal resources lease CA 1063 which was terminated July 1, 1982, for nonpayment of the annual rental and the lands had not been offered to new geothermal resources leasing through the simultaneous filing procedures set forth in 43 CFR 3211.1. 1/

1/ Subpart 3211 of 43 CFR was subsequently removed in rulemaking published at 48 FR 6337 (Feb. 11, 1983).

Appellants state that the application to lease was filed November 1, 1982, and on that date noncompetitive oil and gas lease CA 10021 was issued to one Marvin Wolf for the same lands. Argument is made that as the oil and gas lease was issued, so should the geothermal resources lease also have been issued.

The pertinent regulation, 43 CFR 3210.1, as amended, at 48 FR 6336 (Feb. 11, 1983), to be effective March 14, 1973, reads as follows:

§ 3210.1 Availability of land.

(a) All lands subject to leasing that are not within a KGRA shall be available for lease application under the provisions of this subpart.

(b) For those particular lands included in canceled, relinquished, expired, or terminated leases, the BLM State Office having jurisdiction shall post a description of such lands on the first working day of a calendar month. Such lands shall then be available for lease applications beginning on the first working day of the calendar month following posting. Applications received prior to the first working day of the month following posting shall be considered filed on that date.

[1] The lands in issue in this appeal were formerly included in a now-terminated geothermal resources lease, CA 1063, held by Thermal Power Company. No Federal Register listing of units for re-leasing had been made under 43 CFR 3211.1, the regulation in effect at the time the subject application was filed. Thus, BLM properly rejected this application. Any other action would have been contrary to the regulations then in effect.

Appellants seem to misperceive the Department's authority in leasing geothermal resources. The Geothermal Steam Act of 1970, 30 U.S.C. § 1002 (1976), provides that "the Secretary of the Interior may issue leases for development and utilization of geothermal steam * * *." (Emphasis supplied.) The decision to lease or not to lease is a matter over which the Secretary, or his delegate, exercises discretion. Geothermal resources leasing is not mandatory. Earth Power Corp., 29 IBLA 37 (1977); Eason Oil Co., 24 IBLA 221 (1976). Appellant has not shown wherein there has been any abuse of this discretion in withholding the listing of the lands at issue.

Appellants also appear to be unaware that there is no prohibition against issuance of Federal mineral leases for different minerals on the same tract of land, so that the issuance of an oil and gas lease on the lands sought by appellant for a geothermal resources lease is not justification for issuance of a geothermal resources lease where the lands have not been opened to such geothermal resources leasing in accordance with the regulations.

Appellants should inquire of BLM to ascertain if the land has been posted to the amended 43 CFR 3210.1.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Franklin D. Arness
Administrative Judge
Alternate Member

